

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

On appeal counsel asserts that the June 4, 2015 decision was contrary to law and fact.

### **FACTUAL HISTORY**

This case has previously been before the Board. In a March 25, 2014 decision, the Board affirmed an August 7, 2013 OWCP decision, finding that appellant did not establish that the conditions of disc protrusion at L5-S1 and a bulging disc at L4-5 were caused or aggravated by the January 4, 2012 employment injury.<sup>3</sup>

On March 6, 2015 appellant, through counsel, requested reconsideration and submitted a January 7, 2015 report in which Dr. Kevin J. Collins, a Board-certified physiatrist, noted a history that appellant injured his back while lifting parcels at work in 2011, that magnetic resonance imaging (MRI) scans demonstrated disc bulges and protrusions, and that appellant had lumbar spine surgery. Dr. Collins reported that a recent MRI scan demonstrated enhancing scar tissue and a new herniation above the level of previous surgery. He described appellant's complaint of constant, severe radiating low back pain, and indicated that appellant had not worked since January 2012. Dr. Collins described physical examination findings and diagnosed failed low back syndrome with ongoing severe, unbearable low back pain. He advised that appellant could not work due to a combination of chronic pain combined with large doses of pain medication.

In a June 4, 2015 decision, OWCP denied appellant's March 6, 2015 reconsideration request, finding that the evidence submitted was cumulative and similar to evidence previously of record, and it was, therefore, insufficient to warrant merit review. Appellant appealed to the Board. In an April 6, 2016 decision, the Board found that Dr. Collins' January 7, 2015 report, which had not previously been reviewed by OWCP, constituted relevant and pertinent new evidence in regard to the matter of whether appellant established that herniated lumbar discs at L4-5 and L5-S1 were causally related to a January 4, 2012 employment injury. The Board set aside the June 4, 2015 decision and remanded the case for OWCP to consider whether Dr. Collins' January 7, 2015 report was sufficient to require further development, to be followed by an appropriate *de novo* decision.<sup>4</sup> The facts and circumstances set forth in the prior Board decisions are incorporated herein by reference.

On remand, OWCP reviewed the merits of the claim. In a May 13, 2016 decision, it denied modification of the March 25, 2014 decision.<sup>5</sup> It found that Dr. Collins' January 7, 2015

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<sup>3</sup> Docket No. 14-48 (issued March 25, 2014). On January 9, 2012 appellant, then a 33-year-old city carrier filed a traumatic injury claim alleging that on January 4, 2012 he injured his low back when he tripped on the third step while delivering mail. He stopped work that day. Following an initial May 24, 2012 denial, on December 14, 2012 an OWCP hearing representative accepted that on January 4, 2012 appellant sustained a lumbosacral strain. The hearing representative further found that appellant did not establish any further lumbar conditions, for which he had surgery on July 25, 2012. Appellant requested reconsideration. In a merit decision dated August 7, 2013, OWCP denied modification of the prior decision, finding that the medical evidence submitted was insufficient to establish that disc bulges and protrusions at L4-5 and L5-S1 were causally related to the January 4, 2012 employment injury.

<sup>4</sup> Docket No. 16-0245 (issued April 8, 2016).

<sup>5</sup> The Board notes that the March 25, 2014 decision was a Board decision. OWCP is not authorized to review Board decisions. Although the March 25, 2014 Board decision was the last merit decision, OWCP's August 7, 2013 decision is the appropriate subject of possible modification by OWCP.

report was insufficient to establish causal relationship between the January 4, 2012 employment injury and appellant's current lumbar condition.

### **LEGAL PRECEDENT**

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>6</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>7</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>8</sup>

### **ANALYSIS**

The Board finds that appellant did not meet his burden of proof to establish that his current low back condition was caused by the accepted lumbosacral strain that occurred on January 4, 2012.

In its March 25, 2014 decision, the Board reviewed all evidence submitted following OWCP's August 7, 2013 decision on the merits of appellant's claim. The only medical evidence submitted subsequent to the August 7, 2013 merit decision was the January 7, 2015 report from Dr. Collins, described above. The Board finds that this report contains insufficient rationale to establish that the January 4, 2012 incident, described on the claim form as tripping on the third step while delivering mail, caused or contributed to an additional low back condition.<sup>9</sup>

In his January 7, 2015 report, Dr. Collins indicated that the precipitating event for appellant's current lumbar condition was a 2011 incident that occurred while lifting parcels at work. The Board has long held that medical opinions based on an incomplete or inaccurate history are of diminished probative value.<sup>10</sup> Dr. Collins also referenced a June 25, 2014 MRI scan which is not found in the case record. Nonetheless, he advised that the MRI scan findings were related to the 2011 incident and does not reference a January 4, 2012 tripping incident as the cause of any diagnosed lumbosacral condition.

The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to his federal employment and such relationship must be supported with affirmative evidence,

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<sup>6</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>7</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>8</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>9</sup> *Supra* note 3.

<sup>10</sup> *James R. Taylor*, 56 ECAB 537 (2005).

explained by medical rationale, and based upon a complete and accurate medical and factual background of the claimant.<sup>11</sup> It is appellant's burden to establish that his claimed back condition is causally related to the work injury. In this case he submitted insufficient evidence to show that the diagnosed conditions at L4-5 and L5-S1 were caused by the January 4, 2012 employment injury.<sup>12</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he has herniated lumbar discs at L4-5 and L5-S1 causally related to a January 4, 2012 employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the May 13, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>11</sup> A.D., 58 ECAB 149 (2006).

<sup>12</sup> *Supra* note 7.